

## **REMARKS**

Reconsideration of the application, as amended, is respectfully requested.

Enclosed with this amendment is a check for \$250.00 which covers the additional claims fee. It is noted that the Applicant is a large entity. No additional fees are believed to be due with this amendment. However, if any additional fees are due, the Commissioner of Patents is authorized to charge my deposit no. 11-1152.

### **I. STATUS OF CLAIMS**

Claims 25-43 and 45-46 are pending in this application. Claims 25-34 have been allowed. Claims 35 and 40-43 have been amended to more particularly point out and distinctly claim that which applicants regard as their invention. Claim 44 has been canceled without prejudice in order to expedite prosecution of the present application. New claims 45 and 46 have been added. It is respectfully submitted that no new matter has been added by virtue of this amendment. Support for amended claims 35 and 41-43 is found throughout the specification as originally filed. In particular, support for amended claims 35 and 40-43 may be found on page 26, lines 17-23 and page 27, lines 1-13 and Figs 14-16 of the present specification. Moreover, Support for new claim 45 may be found throughout the specification as originally filed and in particular on page 7 lines, 21-23, page 26, lines 17-23 and page 27, lines 1-13 and Figs 14-16 of the present specification. Moreover, support for new claim 46 may be found throughout the specification as originally filed and in particular on page 16, lines 14-24 of the specification.

### **II. 35 U.S.C. 112, first paragraph Rejections**

Claims 35-44 were rejected under 35 U.S.C. §112, first paragraph as failing to

comply with the written description requirement. The Examiner's rejection appears to be based upon the limitation of "...wherein said enhanced function comprises at least enhancing a function which has already been activated", previously recited in claim 35.

Although Applicants respectfully disagree with the Examiner's position, claim 35 no longer recites the above limitation objected to by the Examiner. Rather, in order to expedite prosecution of the present application, claim 35 has been amended herewith to further clarify the presently claimed invention by replacing the limitation "...wherein said enhanced function comprises at least enhancing a function which has already been activated" with the limitation "... wherein said swipe card reader of said apparatus is also adapted such that one or more additional swipes of said swipe card while the apparatus is in operation results in said enhanced function being further enhanced." in this claim.

Support for the above amendment may be found throughout the specification as originally filed and in particular on page 26, lines 17-23 and page 27, lines 1-13 and Figs. 14-16 of the present specification. For instance, on the above pages of the present specification, a particular embodiment of the presently claimed invention sets forth an example of how the defense function of the amusement device is further enhanced during operation of the device by one or more additional swipes of a data card. In particular, this embodiment describes how one swipe can enhance the defense of the device by partially closing the iris 86 to better prevent an opponents IR beam from penetrating into an IR receiver behind the iris 86. The present specification goes on to describe how in this embodiment the defense function of the device is then further enhanced by closing the partially closed iris 86 even further in response to additional swipes of the data card through the data card reader, until if desired the iris 86 is placed into a fully closed position. Specifically, this embodiment mentions how approximately up to 5 additional swipes of the data card after the initial swipe (a total of six swipes) will move the iris 86

to a fully closed position, thereby fully preventing an opponents IR beam from penetrating into an IR receiver behind the iris 86. It is further noted that the present specification also mentions other embodiments which do the reverse of the above, wherein multiple swipes of the data card can further open the iris 86 of the amusement apparatus with each swipe until, if desired, the iris 86 is placed into a fully open position.

One skilled in the art based upon the above embodiment and the present specification as a whole would readily understand how to provide further enhancement of all of the possible functions during operation of the amusement apparatus of the presently claimed invention by providing one or more additional swipes of a data card. Therefore, it is clear that claim 35 as amended satisfies the written description and enablement requirements of 35 U.S.C. 112, first paragraph. Thus, for the above reasons, withdrawal of the Examiner's rejection to claims 35-43 under 35 U.S.C. 112, first paragraph is respectfully requested. Claim 44 has been canceled without prejudice so the rejection to that claim is now moot.

### **III. 35 U.S.C. § 103(a) Rejection**

The Examiner rejected claims 35 and 37-43 under 35 U.S.C. § 103(a) as being unpatentable over WO 95/30973 to Broadfield ("the Broadfield publication") in view of U.S. Patent No. 4,492,372 to Lorence et al. ("the Lorence patent").

In response, it is respectfully asserted that the combination of the Broadfield publication with the Lorence patent fails to teach or suggest the amusement apparatus as recited in amended claim 35.

As mentioned above, claim 35 has been amended herewith to further clarify that the swipe card reader of the apparatus is also adapted such that one or more additional swipes of the swipe card while the apparatus is in operation results in the enhanced function being further enhanced. It is also noted that this amendment has been made in order to expedite the prosecution of the present application and should not be deemed as being an admission in view of the prior art.

The Broadfield publication at the very least fails to teach or suggest additional or multiple swipes of a swipe card through its swipe card module during operation of its apparatus to further enhance a function already enhanced, as required by amended claim 35. In contrast, the data card reader described in Broadfield is only adapted for receiving a single swipe of its financial card per ride or transaction. Specifically, the Broadfield publication teaches swiping a credit or debit card once into a debit or credit card swipe module 12 in its device in order to initiate a series of pre-programmed movements, pre-programmed visual/auditory effects and pre-programmed vending of a single article to the user. Further, in Broadfield, after a predetermined amount of time has passed then the microprocessor discontinues the predetermined video images and movements of the device and the device is returned to a default status awaiting a further user to complete a financial transaction at transaction point 12.

However, as can be gleaned from the above, one using the device described in Broadfield, is not able to further enhance any of the functions such as the above video and movement functions of the device through additional or multiple swipes of the data card during the operation of the amusement device, as required by claim 35. Rather, the device of Broadfield is limited to one swipe per transaction/amusement ride. The above video and movement features in Broadfield once initiated by the single data card swipe

follow an unaltered and pre-programmed sequence to completion after a predetermined amount of time. Accordingly, even if one were to attempt to swipe a data card into the card reader module 12 of Broadfield one or more additional times after the initial transactional swipe during operation of the device, this clearly would have no affect on the pre-programmed events already taking place.

A good illustrative example of how the data card reader of the presently claimed invention recited in claim 35 further enhances a function already enhanced through one or more additional swipes of the data card during operation of the apparatus is described on page 26, lines 17-23 and page 27, lines 1-13 and Figs. 14-16 of the present specification. As mentioned above in the previous section of the amendment, this particular embodiment of the presently claimed invention sets forth an example of how the defense function of the amusement device is further enhanced during operation of the device by one or more additional swipes of a data card. For the Examiner's convenience, this embodiment will be described again in this section.

The above embodiment describes, for example, how one swipe can enhance the defense of the device by partially closing the iris 86 to better prevent an opponents IR beam from penetrating into an IR receiver behind the iris 86. The present specification goes on to describe how in this embodiment the defense function of the device is then further enhanced by closing the partially closed iris 86 even further in response to additional swipes of the data card through the data card reader, until if desired the iris 86 is placed into a fully closed position. Specifically, this embodiment mentions how approximately up to 5 additional swipes of the data card after the initial swipe (a total of six swipes) will move the iris 86 to a fully closed position, thereby fully preventing an opponents IR beam from penetrating into an IR receiver behind the iris 86.

The Broadfield publication clearly fails to teach or suggest the data card reader features of amended claim 35. Moreover, the Lorence patent fails to cure the above deficiencies of the Broadfield publication because as with Broadfield it likewise fails to teach or suggest the data card reader features of claim 35. In fact, Lorence fails to even teach or suggest the use of a data card reader, let alone the data card reader recited in claim 35.

Therefore, for the reasons set forth herein above, withdrawal of the rejection of claim 35 is respectfully requested. As claims 36-43 depend from and incorporate the limitations of independent claim 35, withdrawal of the above noted rejections to these claims is also requested.

News claims 45-46 are also patentable over the prior art of record for the same reasons as set forth above with regard to claims 35-43 because claims 45-46 recite that a swipe card reader of the apparatus is adapted such that one or more additional swipes of one or more different swipe cards while the apparatus is in operation results in one or more functions enhanced being further enhanced.

In addition to the above reasons, new claim 46 is even further distinguishable from both the Broadfield and Lorence because the apparatus of this claim is a portable toy. In contrast, the devices of both Broadfield and Lorence clearly relate to amusement rides which are not portable.

### III. CONCLUSION

In view of the actions taken and arguments made it is believed that all pending claims as currently presented are now in condition for allowance. A Notice of Allowance is respectfully requested.

According to currently recommended Patent Office policy, the Examiner is requested to contact the undersigned at the telephone number provided below in the event that a telephone interview will advance the prosecution of this application. An early and favorable action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard B. Klar', is written over a horizontal line.

Richard B. Klar

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